

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7661

JOHN DAVID MCBRIDE,

Plaintiff - Appellant,

versus

THE STATE OF VIRGINIA PENAL SYSTEM; STANLEY P.
KLEIN, Judge,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond. Richard L. Williams, Senior
District Judge. (CA-03-690)

Submitted: December 9, 2004

Decided: December 17, 2004

Before NIEMEYER, WILLIAMS, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

John David McBride, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

John David McBride seeks to appeal the district court's order dismissing without prejudice his 42 U.S.C. § 1983 (2000) action pursuant to 42 U.S.C. §§ 1915(e)(2), 1915A (2000) and Heck v. Humphrey, 512 U.S. 477 (1994). We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are given thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order adopting the magistrate's recommendation was entered on the docket on July 9, 2004. McBride filed a timely motion for reconsideration on July 21, 2004. The district court's order denying McBride's motion was entered on the docket on August 2, 2004. The notice of appeal was filed on September 25, 2004.* Because McBride failed to file a timely

*For purposes of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. See Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 270-72 (1988).

notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED